

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Universal Service Reform)

Mobility Fund)

WT Docket No. 10-208

To: The Commission

**JOINT REPLY COMMENTS OF NATIVE PUBLIC MEDIA AND
THE NATIONAL CONGRESS OF AMERICAN INDIANS**

Native Public Media ("NPM") and the National Congress of American Indians ("NCAI") respectfully submit these Reply Comments in response to the above-referenced Notice of Proposed Rulemaking ("*NPRM*").¹

I. SUPPORT FOR THE ESTABLISHMENT OF A TRIBAL MOBILITY FUND

Although only a handful of comments addressed the *NPRM* to set aside a portion of the proposed Mobility Fund specifically for service to Tribal areas, all those that addressed the issue supported the concept. No comments opposed the creation of a Tribal Mobility Fund.² In addition to the Joint Comments filed by NPM and NCAI, several comments highlight the

¹ *In the Matter of Universal Service Reform, Mobility Fund, Notice of Proposed Rule Making, ("Mobility Fund NPRM")*, FCC 10-182, released October 14, 2010. The *NPRM* called for reply comments to be filed 75 days after publication in the Federal Register. The *Mobility Fund NPRM* appeared in the Federal Register on November 1, 2010. 75 Fed. Reg. 67060 (November 1, 2010). The 75th day fell on a weekend and then a federal holiday; thus these Reply Comments are being timely filed on the next business day for the Commission.

² A number of comments opposed the Mobility Fund in general. Most of these were comments filed by existing wireline providers, concerned that money siphoned from the USF fund for new wireless infrastructure would adversely affect their ability to provide continued service under the current USF system, *See generally*, Comments of United States Telecom Assoc.; Comments of USA Coalition; Comments of Texas Statewide Telephone Cooperative, pp. 2-3; Comments of Alaska Telephone Assoc.; or by parties seeking a more holistic reform of USF, including establishment of the Connect America Fund. *See, e.g.* Comments of Windstream, at p. 4; Comments of Centurylink, at pp. 1-2.

desperate need for expanded wireless service for Native Americans.³ For example, Gila River Telecommunications, Inc. ("GRTI"), the Tribal carrier of last resort to the Akimel O'Odham (Pima) and PeePosh (Maricopa) Tribes, described the plight of many Native Americans as follows:

[B]roadband penetration in the GRTI service territory is approximately 20%. . . . These low connectivity rates can, in part, be attributed to the unique challenges facing many Tribal lands. One such challenge is the high-build out costs of the infrastructure necessary to provide ubiquitous mobile broadband service to residents on Tribal lands. Tribal lands are often located in rural areas, significantly raising the cost per subscriber to build-out wireless networks. For example, the sparse population on the Gila River Indian Community and the fact that there are often significant distances between residences within the Gila River Indian Community increases GRTI's infrastructure build out costs. The Gila River Indian Community is located on 372,500 acres of land and has less than 12,000 Native Americans living on the reservation. This low population density leaves little, if any, margin for profit after recovery of the high costs of build-out and operations.

Another factor deterring investment in mobile broadband services on Tribal lands is the limited financial resources of many Native Americans. According to the 2000 census, nearly 50% of families living in the Gila River Indian Community had incomes below the federal poverty line and more than 50% of the population was unemployed. Today, approximately 84% of GRTI's customers qualify for the FCC's Lifeline and Link-Up subsidy programs. As a result, even in those areas of the Gila River Indian Community where cell phone service is available, few residents are able to utilize this service due to their limited financial means. The resulting low usage rate creates an economic hurdle for capital investment in enhancements to and expansion of mobile services on Tribal lands.⁴

Like NCAI and NPM, other commenters agree that without a Tribal set-aside of a portion of the Mobility Fund, Tribes will be faced with more of the same: carriers would have economic incentives to expand wireless coverage only to those areas cheapest to build out, or to offer the

³ See Comments of Alaska Communications Systems, p. 3; Comments of NCTA; Comments of Greenlining Institute, p. 6; Comments of Gila River Telecommunications, Inc.; Comments of General Communications, Inc. (GCI), p. 2; Comments of National Tribal Telecommunications Assoc.; Comments of Commnet Wireless; Comments of Alaska Communications Systems, p. 3.

⁴ GTRI Comments, pp. 3-4.

cheapest (and least robust) service to rural areas.⁵ Commnet Wireless also pointed out the potential for carriers to “game the system” by claiming lack of service to Tribal lands, and then using the Mobility Fund to bolster wireless service to adjacent metropolitan areas:

For example, the state of Connecticut is 4,485 square miles in size. Pima County, Arizona is 9,189 square miles in size, almost double the state of Connecticut. Pima County is the Tucson, Arizona MSA (which consists solely of that one county). Metro Tucson has 3G service. However, not all of the Tohono O'odham Native American Reservation, the vast bulk of which lies within Pima County, has 3G service. If, due to portions of the Tohono O'odham Reservation not having 3G service, one could bid to serve that area but then use the funds to beef up 3G service to Tucson (because it is all the same large county), the goals of the NPRM would not be served.

One could repeat this example across the American West, where geographically large counties in states such as Alaska, Utah, Arizona, Nevada, and Wyoming each have 3G service in their more populated sections, and nothing in vast areas larger than Connecticut. Mobility Fund monies must be used for the unserved census tracts, not just anywhere within a county that happens to contain an unserved census tract.⁶

Implementation of the general Mobility Fund as proposed in the *NPRM* will deliver service to Tribal lands only if the FCC sets aside a percentage of Mobility Fund for such service.

How much of the Mobility Fund (estimated to be between \$100 and \$300 million) should be set aside for service to Tribes? NPM and NCAI suggest that thirty-three percent (33%) of the Mobility Fund be set aside as a Tribal Mobility Fund.⁷ GRTI suggests a twenty percent (20%) set aside, and the National Tribal Telecommunications Association (NTTA) suggests thirty

⁵ See, e.g., Comments of National Exchange Carrier Association, *et al.*, p. 4 (“Reverse auctions will also encourage bidders to “race to the bottom” in terms of service quality and sustainability, a result inconsistent with the universal service objectives of the 1996 Act”).

⁶ Commnet Wireless Comments, p. 5, n.4. See also, Comments of New EA d/b/a Flow Mobile, p. 5 (“Another concern relates to the use of advertised coverage data provided by carriers to determine areas that are “unserved.” Reliance upon carrier provided coverage data will grossly over estimate coverage of “current-generation mobile wireless services” and if the American Roamer database is used to determine eligible unserved areas, many areas that are truly unserved will remain so. The Commission should develop and implement a coverage and level of service methodology to measure eligibility for the Mobility Fund that is based on actual service availability not what the carriers advertise.”)

⁷ NPM/NCAI Comments, p. 8.

percent (30%), based on the approximately 30% disparity between voice-dialtone service between Indian communities and non-Indian communities.⁸ NPM and NCAI continue to support a full one-third set-aside, but do not oppose the 30 percent set-aside proposed by NTTA.

II. COMMENTS UNIVERSALLY CONDEMN THE CONCEPT OF A “REVERSE AUCTION”

If there is one point in which the comments agree, it is that the “reverse auction” proposed in the *NPRM* will not bring mobile broadband to rural areas, but will instead support only the marginal expansion of mobile broadband to the least rural, currently unserved areas.⁹ As pointed out by Commnet, the system proposed can easily be gamed to support expansion of existing services to metro areas.¹⁰ Others warn of a “race to the bottom,” where carriers underbid to win the auction, then deploy minimal or inferior service. As the National Exchange Carrier Association stated: “The mechanisms described in the *NPRM* are not a viable way to determine or distribute ongoing operational support for broadband services. Reverse auctions will also encourage bidders to ‘race to the bottom’ in terms of service quality and sustainability, a result inconsistent with the universal service objectives of the 1996 Act.”¹¹

Even if the Commission establishes a separate Tribal Mobility Fund, it should not use a reverse auction to award grants. The challenges faced by Tribes in bringing service to their people are vastly different from the challenges faced by the rest of rural America. Traditional economic drivers have proven ineffective in bringing telecommunications services to Indian

⁸ NTTA Comments, p. 7.

⁹ See, e.g., Comments of United States Cellular Corporation; Comments of Joint Center for Political and Economic Studies; Comments of T-Mobile; Comments of Rural Telecommunications Group, Inc; Comments of Rural Cellular Association; Comments of Cellular South; Comments of Blooston Rural Carriers; Comments of National Exchange Carrier Association.

¹⁰ Commnet Wireless Comments, p. 5, n.4

¹¹ Comments of National Exchange Carrier Association, et al., p. 4.

Country. A reverse auction, inherently based on profit/loss economics, will not benefit Native Americans nor help close the Digital Divide. For instance, as NPM and NCAI point out, one of the fundamental flaws in the proposed reverse auction is that much of the Mobility Fund would be used to support fill-in services along major highways and roads, while not advancing deployment of broadband to rural inhabitants.¹²

III. COMMENTS SUPPORT THE DIRE NEED FOR TRIBAL INVOLVEMENT IN THEIR TELECOMMUNICATIONS FUTURES

As NPM/NCAI point out in their Joint Comments, merely providing funding to existing carriers will not narrow the Digital Divide.¹³ Without Tribal involvement and input, carriers will again resort to traditional deployment concepts, which provide only residential and high-end business service to maximize profits. If a Tribal Mobility Fund merely subsidizes existing carriers who currently have no spectrum covering Tribal lands, the predictable result will be the deployment of service to highways and major roads that cut through, but otherwise do not serve, Tribal lands. Only if the FCC continues to recognize Tribal sovereignty and directly involve Tribes in the ETC process and in all deployment issues on Tribal lands will a “Tribal-centric” model come to be.¹⁴ Such a model would deploy services first to Tribal anchor institutions such as government buildings, hospitals, schools, and the centers of community life for Native Americans, such as their Chapter Houses.¹⁵ Moreover, Tribal governments must be able to require carriers to market their services to Tribal members and to provide customer service in a

¹² NPM/NCAI Comments, p. 7.

¹³ NPM/NCAI Comments, p. 6.

¹⁴ As pointed out in the NPM/NCAI Joint Comments, the ETC process currently provides the best way to measure a carrier’s commitment to bringing service to Tribal lands. NPM and NCAI reiterate their support for requiring any Mobility Fund participant to acquire ETC status, and as recommended herein, Tribes should play a larger part in any ETC proceeding involving Tribal lands. NPM/NCAI Comments, pp. 12-13.

¹⁵ See National Broadband Plan, pp. 146, 153-55.

manner that respects Tribal sovereignty and Tribal culture. Comments of the Greenlining Institute support this concept:

Tribal leaders are in the best position to identify and determine how to address those needs. Greenlining thus supports the Commission's approach of providing a separate track, on the condition that expanding broadband in Tribal areas is given high priority and the historic lack of access experienced in Tribal lands is not promulgated. We are well aware that 'separate but equal' too often means in practice: separate and unequal. Provided the Commission safeguards against repeating history in this fashion and prioritizes the needs of persons living on Tribal lands, Greenlining can support this approach.¹⁶

In short, money alone is not the answer. Tribes need more say in the use of spectrum covering Tribal lands. Far too often, spectrum licensed to serve Tribal lands remains fallow, or worse, is dedicated to adjacent non-Tribal lands, with little usable spectrum left over to serve Tribal lands. NPM and NCAI strongly urge the FCC to undertake an audit of spectrum use on and near Tribal lands, and where warehousing or using Tribal lands as buffer zones is found, to reclaim that spectrum, and relicense it to an entity committed to serving Tribal lands.¹⁷ As stated in the NPM/NCAI Joint Comments, an applicant seeking funding from the Tribal Mobility Fund should demonstrate that Tribal governments have been consulted and engaged in the planning process and that the service proposed will advance goals established by the Tribe. Preferences in the Tribal Mobility Fund should be given to carriers who will serve all or most of the population of any Tribal lands and to applicants that propose service to Tribal anchor institutions, rather than solely to residential or business users.

NPM and NCAI call upon the FCC to use the government-to-government consultation process to full effect in designing and implementing the Tribal Mobility

¹⁶ Comments of Greenlining Institute, p. 6.

¹⁷ See Comments of National Tribal Telecommunications Assoc., p. 4 ("The FCC should also require partitioning and disaggregation of spectrum for use by a Native community when licensees have failed to build out in Native Unserved Areas").

Fund. The Commission should convene, at the earliest opportunity, a series of workshops and other meetings with Tribes to get input as to how the Tribal Mobility Fund should be implemented. This consultative process should include engineering and technical assistance to Tribes that do not currently possess that capability.

Finally, as NPM/NCAI point out in their Joint Comments, a “Tribal Priority” similar to the one recently adopted for new audio broadcast facilities could be utilized in deploying the Tribal Mobility Fund.¹⁸ Adoption of the FM Tribal Priority was a watershed moment in the relationship between the FCC and Indian Country and can be used as a model here. Adopting a Mobility Fund Priority whereby access to the Tribal Mobility Fund would first be made available to Tribally-controlled carriers would have the huge economic benefit of ensuring that money flowing into reservations stays there. The unique status of Tribes as sovereign political entities calls for unique treatment.¹⁹ NPM and NCAI therefore strongly support the concept of a Mobility Fund Priority.

IV. CONCLUSION

The Comments filed in this proceeding support the need for a Tribal Mobility Fund to help close the Digital Divide. NPM and NCAI applaud the Commission’s creation of a Mobility Fund and believe that, with certain modifications, it could advance the goals of the National Broadband Plan. Special care must be taken to assume that the Mobility Fund will actually serve Tribal lands, and NPM and NCAI urge the Commission to consider closely the comments of those representing Tribes, Tribally-controlled carriers, and other Tribal public interest groups,

¹⁸ See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09-52, RM-11528, 25 FCC Rcd 1583 (2010).

¹⁹ *Id.* at ¶ 12.

and to undertake in earnest the government-to-government consultation process required under the Communication Act.

Respectfully submitted,

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